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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ADOPTION OF ORDINANCES IMPLEMENTING AGREEMENTS
WITH QUALCOMM, INC. AND SAN DIEGO CHARGERS

INTRODUCTION

On March 4, 1997, the City Council will be considering the introduction of two ordinances designed to implement agreements with QualComm, Incorporated ("QualComm") and the San Diego Chargers. This Report discusses the Council's ability to introduce and adopt those ordinances in light of the repeal of Ordinance No. O-18365 pursuant to a certified referendary petition. In our opinion, the Council is free to adopt the ordinances as they are fundamentally different from the repealed ordinance, and do not implement essentially the same agreement. It is the opinion of the City Attorney that the contemplated ordinances impose a completely different financing approach to additional improvements at San Diego Jack Murphy Stadium and therefore may be adopted by the Council.

BACKGROUND

On December 10, 1996, the Council adopted Ordinance No. O-18365 (the "Ordinance") which authorized the City Manager to execute on behalf of the City certain amendments ("the Amendments") to agreements between the City and the San Diego Chargers ("Chargers") for the use and occupancy of San Diego Jack Murphy Stadium ("Stadium"), originally approved in May of 1995 (collectively the "1995 Agreement"). The 1995 Agreement provided, in part, for the expansion and renovation of the Stadium, and construction of a practice facility, at a cost of \$60 million. This project was implemented by various agreements between the City and the Public Facilities Financing Authority of the City (the "Financing Authority") by which the City leased the Stadium to the Financing Authority, the Financing Authority issued bonds to finance the construction and awarded a construction contract for the work, and the Financing Authority leased the Stadium back to the City for a consideration sufficient to make the debt service payments on the bonds.

The Amendments provided, in part, for the payment of additional rent by the Chargers and

a contractual agreement by the City to spend an additional \$18 million on the Stadium expansion and renovation¹ utilizing lease-revenue financing, and the bonding power of the City and the Financing Authority. The Amendments also contained numerous administrative changes to the 1995 agreement primarily related to the delay from the litigation over the financing mechanism for the project.

The Financing Authority has issued \$60 million in bonds and awarded a contract (the "Construction Contract") which provides for the construction of the full scope of the Stadium project, contingent upon available financing.

The Ordinance was successfully referred by a group of citizens and accordingly repealed on February 3, 1997. A court decision (Henderson, et al. v. City of San Diego et al., Superior Court case no. 706794) determined that the repeal of the Ordinance effected the repeal only of the Amendments and did not affect in any way the 1995 Agreement, or any other previous act of the City Council in connection with the Stadium project, including the Construction Contract and any act of the Financing Authority.

Subsequent to the repeal of the Ordinance, QualComm offered to purchase the naming rights to the Stadium for \$18 million. This offer would allow the City and the Financing Authority to complete the expansion and renovation of the Stadium without the use of other public monies and without the need to draw upon the bonding capability of the City or the Financing Authority. Two (2) ordinances and one (1) resolution to approve and implement QualComm's offer, and implement the administrative changes to the 1995 Agreement contemplated by the Amendments, are before the Council for introduction on March 4, 1997.

ANALYSIS

California law provides that, upon the repeal of an ordinance pursuant to a certified referendary petition, the legislative body may not enact the ordinance again for a period of one (1) year. Cal. Elect. Code §9241.² This restriction does not apply unless a subsequently adopted ordinance is "essentially the same" as the one repealed. Reagan v. City of Sausalito, 210 Cal. App. 2d 618, 629 - 630 (1962); Martin v. Smith, 176 Cal. App. 2d 115, 118 (1959). The legislative body is free to legislate in the area of the repealed ordinance, "avoiding perhaps the objections made to the first ordinance" (Reagan, 210 Cal App. 2d at 630, quoting Gilbert v. Ashley, 93 Cal. App. 2d 414, 415 - 416 (1949)) but may not pass an ordinance in "all essential features like the one against which

¹ Approximately \$6.2 million of this additional amount is due to delays as a result of meritless litigation over the financing mechanism for the project. Approximately \$11.8 million is related to "new" construction at the Stadium and practice facility.

² Section 9241, dealing with successfully referred ordinances, provides, in relevant part: "If the legislative body repeals the ordinance . . . the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body"

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the petition protested." Id. at 415. "If this [adoption of a subsequent ordinance] be done, not in bad faith, and not with intent to evade the effect of the referendum petition, the second ordinance should not be held invalid for this cause." Id.; see also Martin, 176 Cal. App. 2d at 118 - 119.

Here, we are of the opinion that the ordinances presented for introduction are not "essentially the same" as the repealed Ordinance. The Amendments, approved by the Ordinance, called for public financing of additional improvements to the Stadium. This was the discernable objection to the Amendments, and there was no discernable objection to other provisions of the Amendments implementing various administrative changes to the 1995 Agreement.³

The new ordinances, by contrast, and the proposed agreements they implement, provide for private financing of the additional improvements to the Stadium. In this manner, the bonding power of neither the City nor the Financing Authority is called upon, nor are the further improvements financed by public monies. It is clear that the City Council is acting in good faith to accomplish necessary public improvements without the use of additional public monies, and not with the intent to evade the effect of the successful referendum petition. It is thus our opinion that Elections Code section 9241 does not prohibit the adoption of the proposed ordinances.

Respectfully submitted,

CASEY GWINN
City Attorney

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³ Other objections were publicly made, however, they concerned elements of the 1995 Agreement which, as the court decision made clear, was not affected by the repeal. In fact, the proponents of the referendum petition, during the court proceedings, focused exclusively on the 1995 Agreement and did not discuss the content of the Amendments.